1947 **File No.** O/CCY/47

Legal Department-

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Subject:—

Opinions on the Cotton Cloth & Yarn (control) Orders 1947

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C O N T E N T S.

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Validy of Sanctions.

Cotton Cloth and Yarn (Control) Order, 1945.

Office of the R.L.A.

Under G.N. C.S.D. No. 518/VII, dated 16-9-1946, the Government of Bombay authorised the Additonal Diretor of Civil Supplies (enforcement), Bombay to grant sanctions for prosecutions under clause 23 of the Cotton Cloth and Yarn (Control) Order, 1945 in respect of offences committed within the area comprising the City of Bombay and Bombay Suburban District. In a case under theCotton Cloth and Yarn (Control) Order, 1945, which is now being heard in the Court of the 2nd Presidency Magistrate, Mazagaon, Bombay, a point is raised by the defence counsel that the sanctions given by Mr. Thanawalla in his capacity as Addl. Director of Civil Supplies (Enforcement) are bad in law. The Presidency Magistrate Mr. Barot relying on teh the judgment of the ~~S~~ High Court, Bombay in Revision Application No. 191 of 1945 in Emp. vs. Purshotam Shah is of opinion that no person could be given the status of a District Magistrate by merely reciting that in the opinion of the authority the person authorised is not below the rank of a District Magistrate. He is therefore of opinion that the sanctions are bad in law. The Police Prosecutor Mr. Rant has therefore submitted the case to Government for obtaining R.L.A.'s opinion on this point.

The question for consideration is whether the sanctions for prosecutions given by ~~the~~ Mr. Thanawalla under the Cotton Cloth and Yarn (Control) Order, 1945 are valid.

The answer to this question is in the affirmative. Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1945 provides that no prosecution for the contravention of any of the provisions of this Order shall be instituted without the previous sanction of the Provincial Government or of such officer of the Provincial Government considered by them to be, not below the rank of District Magistrate as the Provincial Government may by general or special order in writing authorise in this behalf. Mr. Thanawalla was authorised by the Provincial Government for the purposes of clause 23 and it was made clear in the said authorisation viz. in G.N. C.S.D, No. 518/VII, dated 16.9. 1946 that the Provincial Government considered him to be not below ~~that~~ the rank of a District Magistrate. The reliance placed by the Presidency Magistrate Mr. Barot on the judgment in Revision application No. 191 of 1945 Imp. vs. Purshotam M. Shah is not correct because in that case the question was regarding the sanction given ~~given~~ under section 14 of the Hoarding and Profittering Prevention Ordinance by the Deputy Controller General of Civil Supplies and the wording of that section is not similar to ~~t-h-e-of~~ that of clause 23 of the Cotton Cloth and Yarn (Control) Order. Under section 14 of the Hoarding and Profiterring Prevention Ordinance any officer not below the rank of a District Magistrate could be empowered to grant sanction either by the Central or the Provincial Government but the

but the words 'considered by them to be' which occur in clause 23 of the Cotton Cloth and Yarn (Control) Order are absent from section 14. Consequently the High Court held that the rank of the District Magistrate ought to have been created before the empowerment took place and the sanction was therefore invalid. Under clause 23 any person considered by the Provincial Government to be not below the rank of a District Magistrate can be authorised and while authorising Mr. Thanawalla Government has specifically stated that they consider him to be not below the rank of a District Magistrate. The judgment in Revision application No. 191 of 1945 does not apply to this case and the Magistrate's view does not appear to be correct.

The Police Prosecutor should be asked to argue this point on the above lines and if the Magistrate does not agree and holds the sanctions granted by Mr. Thanawalla to be invalid, we may take up the point with the High Court in appeal.

Sd.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 9942, dated the 14th Oct., 1947

SSM / 5/7/56.